STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,209

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Appeal of)

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INTRODUCTION

The petitioner appeals a determination by the Department of Social Welfare that the cost of a handicapped ramp to his home cannot be deducted as a medical expense for purposes of the Medicaid spend-down program.

FINDINGS OF FACT

1. The petitioner is a seventy-one-year-old man who has a degenerative disease in his lower back and marked weakness and atrophy in his right leg and arm probably as a result of diabetic amyotrophy or the residuals of polio he suffered as a child. In the Fall of 1995, a wheelchair was prescribed for the petitioner which he continues to use. He sometimes uses a walker but cannot use crutches due to his upper arm weakness.

2. The petitioner lives in a one story home but there are some steps to the door. Following the petitioner's employment of the walker and the wheelchair as ambulation aids, he had a ramp built to his door at a cost of $266. Without the ramp, the petitioner would have been unable to move independently or safely from his house to the street and would be at risk of falling, an event which occurred frequently in the recent past. The provision of the ramp was supported by both his neurologist, orthopaedist and family doctor as a "medically necessary (in one case "mandatory") expense" due to his dependency on the wheelchair for ambulation.

3. The petitioner, who is a Medicaid recipient subject to a spenddown requirement, asked the Department to include the cost of the ramp as a medical expense deduction in determining his eligibility for Medicaid. The Department denied that request stating that the ramp is not necessary for medical or remedial care but rather an addition to a building.

ORDER

The decision of the Department is reversed.

REASONS

The Medicaid regulations allow persons who have excess applied income to take deductions from that income for medical expenses for which they are liable during the accounting period in order to meet ("spenddown" to) income eligibility guidelines. M423.

Among the types of medical expense which may be deducted are medical expenses of a kind not covered by the Medicaid program:

Non-Covered Medical Expenses

A deduction from applied income is allowed for necessary medical and remedial care for medical services which are recognized by State Law but are not covered by the Medicaid Program. In determining whether a medical expense meets these criteria, the Commissioner may require a Medicaid applicant to submit medical or other related information needed to verify that the service for which the expense was incurred was medically necessary and was a medical or remedial expense. These medical expenses include but are not limited to the services listed below:

- Level III care provided in a hospital setting.

- Private duty nursing services.

- Dental care for persons age 21 and over.

- Hearing aids and examinations for prescribing and/or fitting them for persons age 21 and over.

- Over the counter drugs and supplies.

- Personal care services received in an applicant's own home or in a Level III or Level IV Residential Care Home, as described below.

The Department will allow a personal care deduction for personal care services that are medically necessary in relation to a particular diagnosis. The personal care services may include: preparation of a special diet; physical assistance with personal hygiene, dressing walking, toileting, transferring, standing, eating, assistance with managing medications and/or money; and general supervision of physical and/or mental well-being where a physician states such care is required due to a specific diagnosis, such as Alzheimer's disease or dementia or like debilitating diseases or injuries. Other personal care services found medically necessary by a physician may be deducted.

Medical necessity shall be verified by a written statement or prescription of the patient's physician which specifies the need, quantity and time period covered. In the case of transportation to secure medical services this requirement is waived. In the case of over-the-counter drugs and supplies the requirement to verify medical necessity may be waived in the interest of cost efficiency when the Department can determine that the medical service or item is a common remedy for the applicant's medical condition. In the case of personal care services, the physician must submit a plan of care, a list of the personal care services required, a statement that the services are necessary in relation to a particular medical condition

and a statement that the level of care provided by the particular Residential Care Home is appropriate or, if the client is not living in a Residential Care Home and the services are not provided by a home health agency, that the provider is qualified to provide the service.

Generally, the applicant is required to present a bill or receipt to verify that a medical expense has been incurred or paid. In the case of transportation and over-the-counter drugs and supplies, a reasonable estimate may be used.

Any bills, including bills for non-covered expenses incurred during a period of Medicaid eligibility, which are the current liability of the applicant and which have not been used to meet a previous spend-down requirement may be deducted from applied income.

M432

The above regulation is based on a federal mandate which requires that states participating in the Medicaid program have a plan which takes into account "the cost . . .

incurred for medical care or for any other type of remedial care recognized under state law". 42 U.S.C. § 1396a(a)(17). The federal regulations promulgated pursuant to that regulation require that a participating state deduct "expenses incurred for necessary medical or remedial services that are recognized under state law but not included in the plan". 42 C.F.R. § 435.831(c)(1)(ii). The Vermont federal court has interpreted the above provisions on medical expense deductions as permitting "blanket exclusions only for items the state does not allow as acceptable treatment. Otherwise, the Commissioner must include as 'non-covered medical expense' all costs for necessary 'medical or remedial services that are not covered in the state plan'." Doe v. Wilson, U.S. Dist. Ct., Dist of Vt., No. 81-116, August 16, 1982, CCH Medicare and Medicaid Guide, Oct. '82, No. 32, 148, p. 32, 148.

The petitioner relies on Doe v. Wilson in support of his argument that the petitioner's wheelchair ramp is a necessary medical or remedial expense. However, all the Court decided in that case is that "over-the-counter drugs and supplies which are medically necessary and which are not otherwise prohibited by state law" were included in the definition of an excludible "non-covered medical expense". Id. at p. 10,543. In that case, there was no dispute over the "medical" nature of the items to be deducted. In this case, the deductibility of the wheelchair ramp hinges upon whether such a ramp can fairly be classified as medical or remedial care or services.

The petitioner offers no definition of medical or remedial care or services. What he has offered is the opinion of his physicians that the ramp is a medical necessity for him, not because it is necessary to treat his condition, but because it is necessary to allow him to ambulate independently and safely while moving between his home and the outside world. The issue, then, is whether the term medical or remedial care can apply to a piece of durable equipment whose sole purpose is to allow the petitioner to safely enter and exit his home.(1)

The Medicaid regulations themselves offer a definition of "durable medical equipment" as follows:

Durable medical equipment is defined as equipment which:

Can withstand repeated use; and

Is primarily and customarily used to serve a medical purpose; and

Is generally not useful to a person in the absence of illness or injury;

Is appropriate for use in the home.

M840

While not all durable medical equipment is covered under the Medicaid program (see M841), any equipment which meets the above definition would certainly be medical or remedial in nature. The ramp built by the petitioner is designed to withstand repeated use and is appropriate for use in his home. It would not be useful to him unless he had a disease which restricted his ambulation. The only remaining question is whether or not a wheelchair ramp into a home is primarily and customarily used to serve a medical purpose.

The ramp used by the petitioner is an aid in his ambulation. Without a ramp, he could still move about inside his house, but he could not get out of his house without facing injury.(2) A cruel argument could perhaps be made (the Department does not make this argument) that the petitioner has no medically necessary reason to leave his house, but common sense and understanding lead to the conclusion that all persons need to be able to leave their homes in an emergency and a sick person certainly needs to leave to attend medical appointments. Given these facts alone, as well as the opinions of his physicians that the ramp is necessary to his well-being, it must be concluded that the ramp is necessary for and used to prevent injury, which use classifies as medical(3) in nature. There is no evidence that the petitioner primarily or customarily uses the ramp for any other purpose than to safely leave his home. It must be concluded, then, that the ramp is a piece of durable medical equipment as that term is defined in the Medicaid regulations.

Durable medical equipment which is not covered under the Medicaid regulations clearly falls into the category of a non-covered medical expense at M432 and is deductible from applied income to meet the spend down requirements of eligibility for the Medicaid program, as long as it is a necessary expense. In this case, no argument was advanced that the ramp was not necessary to help the petitioner to ambulate out of his house or that a cheaper means would be available to him. To be sure, the Department is not required to deduct any and all expenses incurred by individuals to modify their dwellings to accommodate their medical problems. The availability of a reasonable alternative is always an issue. In this case, however, the problem to be accommodated, a few steps up to the front door, is one so universally encountered and the expense of resolving that problem so low, $266, that it is difficult to imagine a cheaper alternative. As the ramp in this case is necessary durable medical equipment which is not covered by the Medicaid program, it meets the criteria for a deduction under M432.

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1. In the past, advocates for wheelchair bound patients have argued that Medicaid should cover electric wheelchairs and specialized adaptations to allow patients to leave their homes and move about freely in the community. The "medical necessity" of such independence has never been directly addressed by the Board because the Medicaid regulations do not adopt a "medical necessity" standard for the provision of wheelchairs but rather a more narrow standard of avoiding confinement to a bed or chair. See Fair Hearing No. 13,298. This case is to be distinguished because the medical cost exclusion provisions of

the spenddown program does adopt a "medical necessity" standard.

2. No evidence was offered that the petitioner has someone present or available to help him in and out of the house.

3. The word "medical", as defined in The American Heritage Dictionary, 2d College Edition, Houghton-Mifflin Co., 1982, is "of or pertaining to the study or practice of medicine". "Medicine" in turn is defined as "the science of diagnosing, treating, or preventing disease and other damage to the body or mind". (Emphasis supplied.)